1992

The State of Utah, by and through Layton City v. William A. Atwood : Brief of Appellee

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

STATE OF UTAH, by and through LAYTON CITY,	:	BRIEF OF APPELLEE
Plaintiff/Appellee,	:	Case No. 920483-CA
v.	:	
WILLIAM A. ATWOOD,	:	Argument Priority No. 2
Defendant/Appellant.	:	

BRIEF OF APPELLEE

APPEAL FROM THE JUDGEMENT OF THE SECOND CIRCUIT COURT, DAVIS COUNTY, STATE OF UTAH, THE HONORABLE K. ROGER BEAN PRESIDING.

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STATEMENT OF APPELLATE JURISDICTION

This appeal arises from a jury verdict and conviction in the Second Circuit Court Layton Department. Pursuant to Utah Code Ann. § 78-2a-3(2)(d), the Utah Court of Appeals has appellate jurisdiction over criminal appeals from the circuit courts.

STATEMENT OF THE ISSUES

This Court is presented with the following issues on appeal:

1. Whether Defendant's motion to suppress the blood test results of the blood sample drawn to determine the alcohol content of Defendant's blood at the time he was operating a motor vehicle was properly denied.

2. Whether the admission into evidence of the blood test, if error, was harmless error.

STANDARD OF REVIEW

The standard of review for each of the issues presented is as follows:

Motion to Suppress. This Court reviews the factual findings underlying the trial court's decision to grant or deny a motion to suppress evidence using a clearly erroneous standard. The Court reviews the trial court's conclusions of law based on these facts under a correctness standard. State v. Gurule, 216 Utah Adv. Rep. 23 (Utah App. 1993); State v. Brown, 201 Utah Adv. Rep. 4, 6 (Utah 1992); State v. Ramirez, 817 P.2d 774, 781-82 (Utah 1991).

Harmless Error. In reviewing the admission of evidence erroneously admitted pursuant to a denial of a motion to suppress, the test for harmless error in cases not involving constitutional rights is whether, absent the error, there was a reasonable likelihood of a more favorable result for the defendant. State v. Lanier 778 P.2d 9 (Utah 1989); State v. Knight, 734 P.2d 913, 919 (Utah 1987); State v. Verde, 770 P.2d 116, 122 (Utah 1989).

DETERMINATIVE STATUTES AND RULE

Utah Code Ann. § 26-1-30 (1992)

Utah Code Ann. § 41-6-44.10(5)(a) (1992)

Utah Code Ann. § 41-6-44.5 (1992)

Utah Admin Code R. 440-12.2 (1992)

STATEMENT OF THE CASE

Defendant was cited for driving under the influence of alcohol, a Class "A" misdemeanor in violation of Utah Code Ann. § 41-6-44(3)(a) and several other traffic offenses. Defendant filed a motion to suppress the results of the blood test asserting that the blood draw was not conducted in conformance with the

requirements of § 41-6-44.10(5)(a) and therefore was inadmissable. On June 30, 1993, the matter came before the trial court on Defendant's Motion to Suppress. A witness for the prosecution, Craig Woodall, an airman from Hill Air Force Base, did not appear. Testimony was taken from Deputy Paramedic Neal L. Wagner and the matter was argued before the Court. The Court continued the matter to give the prosecution the opportunity to produce Craig Woodall. A mix-up in scheduling resulted in the Court's not taking testimony from Woodall at the continued suppression hearing and ruling on Defendant's motion on July 9, 1993, just prior to the scheduled jury trial. The trial court denied Defendant's motion to suppress and the results of the blood test were ultimately admitted into evidence.

After hearing evidence and argument, the jury returned a verdict of guilty of driving under the influence. The other traffic charges were dismissed. This appeal stems from the trial court's denial of Defendant's motion to suppress and the subsequent jury verdict.

STATEMENT OF FACTS

On March 28, 1992, at approximately 5:30 p.m., Diana Evans, a Layton resident, was traveling south in her Astro Van on Adamswood Road (approximately 350 North, 1200 East), a narrow, two lane, un-lined, curving road in Layton (Evans Transcript, pages 5, 13.) (hereinafter "Evans T."). As she rounded a corner in the road at a speed of about 20 to 25 m.p.h. (Evans T. 13), she observed a red ATV three-wheeler driven by Defendant. Defendant's ATV was

traveling at a high rate of speed and was attempting to maneuver the corner. Defendant's vehicle was in Ms. Evans' lane of travel. As Defendant swerved to the right, attempting to return to his lane of travel, the ATV tipped over, throwing Defendant and a passenger, Defendant's 7-8 year old daughter, from the vehicle. Ms. Evans witnessed the spill and had to take evasive action, pulling to the right and down into a gully to the side of the road, in order to avoid hitting the ATV, Defendant and his daughter. (Evans T. 3-5.)

Moments after the accident, Ms. Evans made contact with the Defendant and his daughter. The Defendant was trying to get his helmet off but was having a difficult time. Ms. Evans could see that Defendant and his daughter were injured. However, when Ms. Evans indicated she was going to call an ambulance or the police, Mr. Atwood strenuously objected. (Evans T. 7, 9.) Ms. Evans had the Defendant sit down and contacted the police. Mr. Atwood stood again and tried to leave the scene by attempting to push his vehicle--still on its side--again stating that he did not want to wait for the police to arrive. (Evans T. 8.)

While Ms. Evans was waiting for the police and paramedics to arrive, she tried to talk with Defendant in hopes of keeping him calm and alert. She noticed that his speech was slurred and asked if he had been drinking. Defendant indicated he had "a few beers." (Evans T. 9.) Officer Grubb was the first officer on the scene. When questioned by Officer Grubb, Defendant did not respond. At that time, Officer Grubb observed that the Defendant was distant and incoherent. (Grubb T. 1, 5-6).

Officer Hein arrived and made contact with Defendant shortly after the paramedics arrived on the scene. He kneeled behind Defendant's right shoulder while the paramedics attended to the Defendant. Officer Hein observed at that time that Defendant's speech was slurred, that he appeared to be somewhat incoherent and that there was a distinct odor of alcohol coming from the Defendant. (Hein T. 5) When asked how much alcohol he had consumed prior to the accident, the Defendant responded that "he couldn't remember." (Hein T. 6)

Defendant and his daughter were transported to Hill Air Force Base Emergency Room at Defendant's request.[1] (Atwood T. 14) Officer Hein made contact with Defendant at the emergency room and observed that the defendant appeared to be much more coherent and alert than he had been at the accident scene. Defendant was sitting up and conversing with individuals in the emergency room. The medical staff were focusing their attention on Defendant's daughter. There was no medical personnel working on or attending to Mr. Atwood. (Hein T. 10) When Officer Hein asked the Defendant how he felt, he stated he was "feeling better." (Hein T. 11.)

Officer Hein informed the Defendant that he had reason to believe that the Defendant was driving under the influence of alcohol and asked if he would perform a few tests. The Defendant agreed to do so. (Hein T. 11.) Officer Hein administered standard field sobriety tests including the horizontal gaze nystagmus, the

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[1]Defendant was, at the time, active duty military, stationed a Hill Air Force Base.

alphabet and the finger count. Based on Defendant's inability to satisfactorily perform the tests, Officer Hein concluded that Defendant was under the influence of alcohol to an extent he could not safely operate a motor vehicle. (Hein 6-9, 11-16.)

Defendant agreed to submit to a blood draw. After blood was drawn from Defendant's arm, Officer Hein asked Defendant several questions about Defendant's actions prior to the accident. Defendant told Officer Hein that he had drank "quite a bit" and that he did not know when he had his first drink or when he had stopped. He also stated that he did not know if he was under the influence of alcohol and that he had not been involved in an accident that day.

Deputy Neil Wagner, a Deputy Sheriff Paramedic, administered the blood test. Deputy Wagner first observed the Defendant in the emergency room at Hill Air Force Base. He observed that the Defendant appeared to be intoxicated at the time. (Wagner Suppression Hearing Transcript, page 12.) (hereinafter Wagner "S.H.T.") Deputy Wagner, who is qualified under Utah Code Ann. § 41-6-44.10(5)(a) and § 26-1-30 to draw blood (Wagner T. 48), used the standard blood draw kit provided to him by Officer Hein. (Wagner 50, Hein 17.)[2] He was assisted by Craig Woodall, a

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[2]The kit provides a betadine preparation used to sterilize the area from which the blood is to be drawn, a vacutainer, a special needle and two blood specimen tubes. Deputy Wagoner described the vacutainer as a three inch plastic sleeve with a diameter slightly smaller than a quarter. The syringe, which is inserted in the vein extends from the closed end of the vacutainer. Blood specimen tubes are inserted into the plastic sleeve and when pushed down a rubber stopper surrounding another syringe inside the sleeve is pushed back and the blood flows into the specimen tube. (Wagoner

certified medical laboratory technician stationed at Hill Air Force Base (Woodall T. 38, Wagner T. 50).[3]

Lab technician Woodall, acting at the direction of an emergency room physician (Woodall T. at 39, 42), needed blood to complete the Blood Alcohol Test and Complete Blood Count test ordered by the attending physician. Woodall and Wagner conversed about how best to proceed in a manner that would not require that the Defendant be "stuck" twice with the needle. (Wagner S.H.T. 13) Woodall applied a tourniquet supplied by the emergency room. (Wagner S.H.T. 20.) The vein area was then swabbed with the betadine preparation supplied with the state blood kit. Lab Tech Woodall, while being observed by Deputy Wagner, performed a standard venipuncture or "stick" in Defendant's right arm using the vacutainer provided in the state blood draw kit. (Woodall T. 40, 46, Wagner T. 51, Wagner S.H.T. 16-18.) Deputy Wagner testified that the venipuncture was completed in accordance with his own paramedic training. (Wagner T. 51-52, Wagner S.H.T. 16-18.)

After the venipuncture was completed, lab technician Woodall used two of the emergency room's specimen tubes to remove the blood needed for the hospital's purposes. Deputy Wagner then used the

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S.H.T. 15, Wagoner T. 50-51) Lab technician Woodall referred to the apparatus described by Wagoner as the "hub". (Woodall T. 40.) Woodall referred to the specimen tubes as "vacutainers." See Exhibit 1 in Addendum.

[3]Although the record as it now stands before the Court, does not reflect whether Woodall was certified under Utah Code Ann. § 44-6-44(5) to perform blood draws, it was stipulated by counsel for both parties that in fact Woodall was not certified under section 44-6-44(5). The Court should consider the stipulation as part of the record.

specimen tubes provided in the blood draw kit to withdraw blood for DUI testing purposes. (Woodall T. 44-45, Wagner T. 51). The blood sample was submitted to the state toxicology lab by Officer Hein. The results of the test showed that Defendant had been driving with a blood alcohol level of .30 milligrams of alcohol per one hundred milliliters of blood. (Jepson T. 4-5.)

The defendant testified at trial that he had been preparing his ATV for summer use after a winter storage period. He had not driven the vehicle since it had been stored several months earlier. He testified that he had been drinking beer which he had purchased at Hill Air Force Base. Beer available on Base has a 6% alcohol content, almost twice the 3.2% alcohol content of the beer which is available in Utah. (Atwood T. 11, Jeppson T. 12.) He testified that he had been drinking continuously since 12:00 noon. (Atwood T. 12) However, he stated that he drank only 4 or 5 beers between noon and 5:30 when the accident occurred. Defendant admitted that he was basing the numbers on his "usual" consumption. (Atwood T. 23.)

Defendant testified that he had problems with the bike's throttle prior to winterizing the unit for storage. He claimed that the throttle had stuck as he drove around the corner in the road and the excessive speed caused the accident. However, he also testified that even though he knew of the past problems with the bikes throttle, he did not feel at the time that it was inappropriate to take his daughter with him on the test ride. (Atwood T. 22.)

Defendant further testified that he suffered a fractured jaw as a result of the accident and extensive internal injuries which kept him the hospital for one month. (Atwood T. 16-20). However, he also testified that the emergency room doctor was going to send him home after the doctor had verified that Defendant's jaw was fractured. It was only after being advised of his release and after he had been at the hospital for some time, that he realized that he may be suffering from internal injuries and reported his discomfort to the doctor. (Atwood T. 16-17.) There was no expert medical testimony offered.

Defendant could not remember many things about the accident or his experiences in the emergency room. He did not remember speaking with Ms. Evans. He did not remember speaking with the officers. He did not remember the blood being drawn. (Atwood T. 13-16, 23-24.) However, he gave fairly extensive and specific testimony about his experiences at the hospital to which he was transported from the Base and claimed to recall several life-threatening situations. (Atwood T. 18-20.)

SUMMARY OF THE ARGUMENT

The trial court's findings that the blood draw was conducted by Deputy Wagner, an individual duly authorized, was not clearly erroneous. The facts support the finding and the trial court's finding should be upheld.

The blood draw was conducted in substantial compliance, if not strict compliance, with the statue and therefore was properly admitted into evidence. Lab Technician Woodall's involvement in

the blood draw was minimal. Furthermore, Woodall is clearly qualified to hold a permit under the statute, however his unique situation in the military makes the permit unnecessary for his daily tasks.

The blood draw results were properly admitted under general principals of evidence and pursuant to § 41-6-44.5. Non-compliance with the implied consent laws only causes the test results to loose the presumption of admissibility. Any competent, relevant evidence, including evidence of blood test results, is admissible upon the laying of a proper foundation.

Any error in the admission of the blood test results was harmless error as there was other overwhelming evidence of Defendant's guilt.

ARGUMENT

POINT I: THE BLOOD DRAW WAS CONDUCTED IN COMPLIANCE WITH THE REQUIREMENTS OF § 41-6-44.10(5)(a).

Utah Code Ann. § 41-6-44.10(5)(a) provides that only a physician, registered nurse, practical nurse or an individual holding a permit issued by the State Health Department may draw blood for DUI testing purposes.[4] The trial court correctly

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[4]Section 41-6-44.10(5)(a) provides as follows:

> Only a physician, registered nurse, practical nurse, or person authorized under Section 26-1-30, acting at the request of a peace officer, may withdraw blood to determine the alcoholic or drug content. This limitation does not apply to the taking of a urine or breath specimen.

Section 26-1-30 reads in pertinent part as follows:

concluded that the blood sample in question was drawn by Deputy Wagner, an authorized individual. The court found that there is much more to drawing blood than simply inserting a needle in a person's vein and that the actual blood draw occurred when Deputy Wagner placed the vacutainer tube on the second needle. (See S.H.T. July 9, 1992, 2-3).

The facts before this Court support the trial court's findings. Although Lab Technician Woodall performed the venipuncture, no blood was removed from the Defendant's arm until Deputy Wagner placed the vacutainer tubes obtained from the state blood-draw kit inside the hub and broke the seal with the needle.

This Court cannot find that the trial court's findings are clearly erroneous on this matter. Therefore, the trial court's ruling on Defendant's Motion to Suppress should be affirmed and Defendant's conviction upheld.[5]

> (2) In addition to all other powers and duties of the department, it shall have and exercise the following powers and duties:
>
> * * *
>
> (r) establish qualifications for individuals permitted to draw blood pursuant to Section 41-6-44.10, and to issue permits to individuals it finds qualified, which permits may be terminated or revoked by the department;

[5]Defendant's reliance on Gibb v. Dorius, 533 P.2d 299 (Utah 1975) is misplaced. The statute in question has been amended and no longer contains the language relied on by the Defendant in Gibb. The pertinent statute at the time the Gibb case was decided read as follows:

> Only a physician, registered nurse, practical nurse or duly authorized laboratory technician, acting at the request of a police officer can withdraw blood for the purpose of determining the alcoholic or drug content

POINT II: THE BLOOD DRAW WAS CONDUCTED IN SUBSTANTIAL COMPLIANCE THE REQUIREMENTS OF § 41-6-44.10(5)(a).

The facts of this case show that the blood draw was conducted in substantial compliance, if not strict compliance, with the requirements of § 41-6-44.10(5)(a). It is clear that the legislative intent behind the requirements set forth in § 41-6-44.10(5)(a) were established not only to protect the health and welfare of the person from whom the blood is being drawn but also to maintain the reliability of the blood sample itself. The legislature wanted to ensure that medically trained and competent individuals complete the bloods draws authorized in § 41-6-44.10(5)(a) using medically acceptable procedures. See State v. Barnick, 477 N.W.2d 200 (N.D. 1991); Greaves v. North Dakota State Highway Commissioner, 432 N.W.2d 879 (N.D. 1988); State v. Hanson, 345 N.D.2d 845, 849-50 (N.D. 1984)

Lab Technician Woodall's involvement in Defendant's blood draw in no way endangered the Defendant or affected the reliability of the blood sample. It is clear from his testimony that Lab Technician Woodall was qualified to hold a permit from the State Health Department.[6] He testified that he had completed 15 months

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therein . . . .

Furthermore, the case should be given little or no weight since the Supreme Court, while refraining specifically to overrule the case, stated in State v. Durrant, 561 P.2d 1056 (Utah 1977) that the decision is "of small value since it was decided by a divided court three to two, and two of the three members who favored the decision are no longer with the court . . . ."

[6]Rule R440-12.2 of the Utah Administrative Code provides as follows:

of training and that he was certified with the American Society of Clinical Pathologists as a Medical Laboratory Technician. (Woodall T. 37-38.) Because of his association with the U.S. Air Force, Lab Technician Woodall did not need Utah State certification to perform his duties.[7]

Deputy Wagner testified that the venipuncture was performed in accordance with his own training and experience. All of the equipment used in the blood draw--all except the tourniquet which

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> R440-12.2 Authorized Individual - Qualifications.
> Pursuant to section 26-1-30(19), Utah Code Annotated 1953, as amended, individuals other than physicians, registered nurses, or practical nurses shall meet one of the following requirements as a prerequisite for authorization to withdraw blood for the purpose of determining its alcoholic or drug content when requested to do so by a peace officer.
> A. Training in blood withdrawal procedures (venipuncture) obtained as a defined part of a successfully completed college or university course taken for credit, or
> B. Training in blood withdrawal procedures (venipuncture) obtained as a defined part of a successfully completed training course which prepares individuals to function in routine clinical or emergency medical situations under the guidance of a physician, or
> C. Training of no less than three weeks duration in blood withdrawal procedures (venipuncture) under the guidance of a licensed physician.
> D. Individuals actively engaged in performing blood withdrawal procedures (venipuncture) at the time these rules become effective and who have been so engaged for a six-month period immediately preceding the effective date, but not meeting one of the above requirements, are eligible for authorization by a peace officer.

[7]The Court should consider that Defendant was taken to the hospital at Hill Air Force Base at his own request. It would seem to fly in the face of justice to allow Defendant to succeed on his claim that a state law was violated because a participant in the blood draw who was on a federal installation and subject only to federal jurisdiction did not have a state permit.

is not provided with the state blood draw kit--came from the state blood draw kit. Deputy Wagner, an authorized individual, withdrew the blood for blood alcohol testing purposes.

If this Court finds that the blood draw was not completed in strict compliance with § 41-6-44.10(5)(a), then there is sufficient evidence to support the finding that the blood draw was completed in substantial compliance with that section. The Court should affirm the trial court's denial of Defendant's Motion to Suppress based on the fact that the blood draw was completed in substantial compliance, if not strict compliance, with the requirements of § 41-6-44.10(5)(a).

POINT III: THE BLOOD TEST RESULTS WERE PROPERLY ADMITTED PURSUANT TO § 41-6-44.5.

Section 41-6-44.5 governs the admissibility of chemical test results in action for driving under the influence of alcohol. This section specifically states that a court may receive "otherwise admissible evidence" regarding a defendant's blood alcohol level at the time he was driving.[8] Section 41-6-44.5 provides a presumption

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[8]Section 41-6-44.5 provides as follows:

> **(1)** In any action or proceeding in which it is material to prove that a person was operating or in actual physical control of a vehicle while under the influence of alcohol or drugs or with a blood or breath alcohol content statutorily prohibited, the results of a chemical test or tests as authorized in Section 41.6.44.10 are admissible as evidence.
>
> (2) If the chemical test was taken more than two hours after the alleged driving or actual physical control, the test result is admissible as evidence of the person's blood or breath alcohol level at the time of the alleged operating or actual physical control, but the trier of fact shall determine what weight is given to the

of admissibility of tests conducted in accordance with § 41-6-44.10(5)(a). Therefore tests taken in deviation from § 41-6-44.10(5)(a) may lose the presumption of admissibility, but may be admitted as evidence pursuant to the rules of evidence upon the laying of a proper foundation as "otherwise admissible evidence." See State v. Bowers, 716 P.2d 471 (Colo. 1986)(substantial compliance with breath test requirements and proper foundation provided for admissibility of test results); State v. Drdak, 411 S.E.2d 604 (N.C. 1992)(blood test not conducted with statutory guidelines admissible on other grounds). But See State v. Ibsen, 735 P.2d 957 (Hawaii App. 1987), State v. Barnick, 477 N.W.2d 200 (N.D. 1991) and Robertson v. State, 604 So.@d 783 (Fla. 1992) (holding suppression proper when blood not drawn by person not authorized by law.)

The Defendant in State v. Sterger, 808 P.2d 122 (Utah App. 1991), presented this Court with the exact question Defendant now proposes; should the blood test results have been suppressed because the blood sample was taken by persons not authorized to draw blood pursuant to Utah Code Ann. § 41-6-44.10(5)(a). In Sterger, this Court found § 41-6-44.10(5)(a) inapplicable, but noted that the Court's Oregon counterpart held under similar facts that "defects in administering such a test go to the weight to be

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result of the test.

(3) This section does not prevent a court from receiving otherwise admissible evidence as to a defendant's blood or breath alcohol level or drug level at the time of the alleged operating or actual physical control.

given its results by the trier of fact, but do not make the results inadmissible." Sterger, at 128, n.7.[9]

The Prosecution laid the proper foundation for the admission of the blood test at trial. Lab Technician Woodall and Deputy Wagoner testified regarding the procedure for drawing the blood. The chain of evidence was established by testimony and stipulation. Barbara Jepson, the prosecution's expert witness, testified to her qualifications and experience in analyzing blood specimens and to the results of the test. There was sufficient and proper foundation for the admission of the blood test results as "otherwise admissible evidence." The fact that the test may not have been conducted in strict compliance with the law goes to the weight to be given the evidence, a decision strictly within the providence of the jury.

This Court should consider that suppression of evidence is a drastic remedy and is generally confined to violations of constitutional rights. The issue before the Court is one of evidentiary admissibility and not constitutional suppression. There is no language in the statutes pertaining to DUI drug testing that expressly conditions the admissibility of breath or blood testing on strict compliance with § 41-6-44.10(5)(a). In fact, §

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[9]The position is reinforced by the fact that the 1993 amendments to § 41-6-44.5 added subsection (1)(b) which reads as follows:

> (b) In a criminal proceeding, noncompliance with Section 41-6-44.10 does not render the results of a chemical test inadmissible. Evidence of a defendant's blood or breath alcohol content or drug content is admissible except when prohibited by Rules of Evidence or the constitution.

41-6-44.5 provides for the admission of other competent evidence. The Court should uphold the trial court's denial Defendant's Motion to Suppress as there was sufficient foundation to support the admission of the blood test results.

POINT IV: THERE WAS OVERWHELMING EVIDENCE PRESENTED AT TRIAL ASIDE FROM THE BLOOD TEST RESULTS TO SUPPORT THE DEFENDANT'S DUI CONVICTION.

Even if this Court finds that the blood test results were erroneously admitted into evidence, the Court must find that absent the error, the outcome would have been more favorable to the defendant. There was overwhelming evidence introduced at trial--aside from the blood test results--showing that Defendant was driving under the influence of alcohol to the extent that he could not safely operate a motor vehicle. The evidence showed the following:

1) Defendant was involved in an injury accident.

2) Defendant had a distinct odor of alcohol about him.

3) Defendant had drank at least four or five beers with a 6% alcohol content prior to the accident.

4) Defendant showed a lack of judgment in allowing his daughter to ride on a bike which he knew had throttle problems.

5) Defendant did not want to have contact with police or medical help after the accident.

6) Defendant did not report his significant injuries to the attending physician until he was informed he was to be released.

7) Defendant could not perform simple field sobriety tests and showed significant impairment on the horizontal gaze nystagmus test.

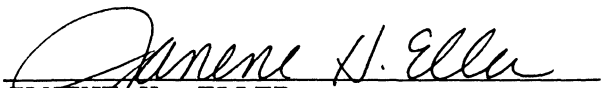
This evidence, when considered together, was more than sufficient

to uphold the jury's verdict of guilty of driving under the influence of alcohol. See Gavin v. State, 827 S.W.2d 161 (Ark. 1992).

CONCLUSION

Based on the foregoing, this Court should affirm the trial Court's denial of Defendant's Motion to Suppress.

Respectfully Submitted this 18th day of January, 1994.



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CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the foregoing Brief of Appellee was mailed to the following:

Steven C. Vanderlinden, by and through
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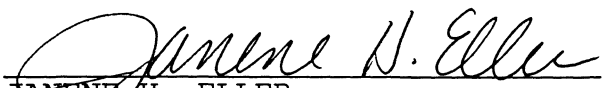

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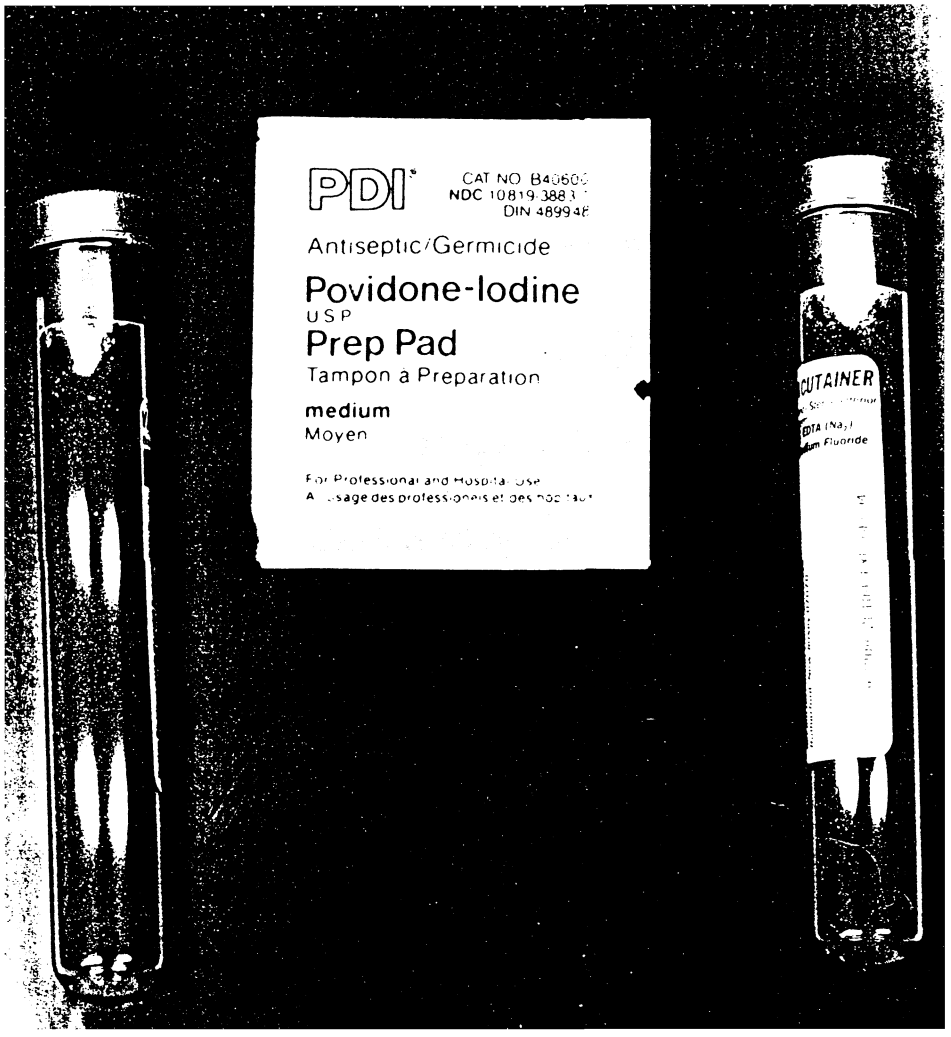
Attorney for Plaintiff-Appellee

ADDENDUM

EXHIBIT ONE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Moyen
For Professional and Hospital Use
CUTAINER

DETERMINATIVE STATUTES AND RULES

26-1-30(2)(r). Powers and duties of department.

* * *

(2) In addition to all other powers and duties of the department, it shall have and exercise the following powers and duties:

* * *

(r) establish qualifications for individuals permitted to draw blood pursuant to Section 41-6-44.10, and to issue permits to individuals it finds qualified, which permits may be terminated or revoked by the department;

41-6-44.5. Admissibility of chemical test results in actions for driving under the influence. Weight of evidence.

(1) In any action or proceeding in which it is material to prove that a person was operating or in actual physical control of a vehicle while under the influence of alcohol or drugs or with a blood or breath alcohol content statutorily prohibited, the results of a chemical test or tests as authorized in Section 41.6.44.10 are admissible as evidence.

(2) If the chemical test was taken more than two hours after the alleged driving or actual physical control, the test result is admissible as evidence of the person's blood or breath alcohol level at the time of the alleged operating or actual physical control, but the trier of fact shall determine what weight is given to the result of the test.

(3) This section does not prevent a court from receiving otherwise admissible evidence as to a defendant's blood or breath alcohol level or drug level at the time of the alleged operating or actual physical control.

41-6-44.10(1)(a). Implied consent to chemical tests for alcohol or drug - Number of tests - Refusal - Warning, report - Hearing, revocation of license - Appeal - Person incapable of refusal - Results of test available - Who may give test - Evidence.

(1)(a) A person operating a motor vehicle in this state is considered to have given his consent to a chemical test or tests of his breath, blood, or urine for the purpose of determining whether he was operating or in actual physical control of a motor vehicle while having a blood or breath alcohol content statutorily prohibited

under Section 41-6-44 or 41-6-44.4, or while under the influence of alcohol, any drug, or combination of alcohol and any drug under Section 41-6-44, if the test is or tests are administered at the direction of a peace officer having grounds to believe that person to have been operating or in actual physical control of a motor vehicle while having a blood or breath alcohol content statutorily prohibited under Section 41-6-44 or 41-6-44.4, or while under the influence of alcohol, any drug, or combination of alcohol and any drug under Section 41-6-44.

41-6-44.10(5)(a).

a) Only a physician, registered nurse, practical nurse, or person authorized under Section 26-1-30, acting at the request of a peace officer, may withdraw blood to determine the alcoholic or drug content. This limitation does not apply to the taking of a urine or breath specimen.

R440-12.2. Authorized Individual - Qualifications.

Pursuant to section 26-1-30(19), Utah Code Annotated 1953, as amended, individuals other than physicians, registered nurses, or practical nurses shall meet one of the following requirements as a prerequisite for authorization to withdraw blood for the purpose of determining its alcoholic or drug content when requested to do so by a peace officer.

A. Training in blood withdrawal procedures (venipuncture) obtained as a defined part of a successfully completed college or university course taken for credit, or

B. Training in blood withdrawal procedures (venipuncture) obtained as a defined part of a successfully completed training course which prepares individuals to function in routine clinical or emergency medical situations under the guidance of a physician, or

C. Training of no less than three weeks duration in blood withdrawal procedures (venipuncture) under the guidance of a licensed physician.

D. Individuals actively engaged in performing blood withdrawal procedures (venipuncture) at the time these rules become effective and who have been so engaged for a six-month period immediately preceding the effective date, but not meeting one of the above requirements, are eligible for authorization by a peace officer.